No. 3726.

IN THE

# United States
# Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

Peter B. Hovley,
*Plaintiff in Error,*
*vs.*
The United States of America,
*Defendant in Error.*

## BRIEF OF PLAINTIFF IN ERROR.

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## STATEMENT OF THE CASE.

On the 30th day of April, 1920, at the January term, in said year, in the United States District Court for the Southern District of California, Southern Division, the grand jurors of the United States of America, inquiring for said Southern District of California, found, returned and presented to said District Court an indictment against the plaintiff in error herein (whose true name is Peter P. Hovley), in a cause

sounding "The United States of America v. Peter B. Hovley, No. 2045, in the District Court of the United States for the Southern District of California, Southern Division," said indictment being based on an act of Congress, passed June 25, 1910, commonly known as the Mann White Slave Act.

The offense intended to be charged in said indictment is that denounced by section 2 of the said Mann White Slave Act (act of June 25, 1910, Ch. 395, Sec. 2, 36 Stat. L. U. S. 825), wherein it is provided that:

> "Any person who shall knowingly transport or cause to be transported, or aid or assist in obtaining transportation for, or in transporting, in interstate or foreign commerce, or in any territory or in the District of Columbia, any woman or girl for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent and purpose to induce, entice or compel such woman or girl to become a prostitute or to give herself up to debauchery, or to engage in any other immoral practice; or who shall knowingly procure or obtain, or cause to be procured or obtained, or aid or assist in procuring or obtaining, any ticket or tickets, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice or compel her to give herself up to the practice of

prostitution, or to give herself up to debauchery, or any other immoral practice, whereby any such woman or girl shall be transported in interstate or foreign commerce, or in any territory or the District of Columbia, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars, or by imprisonment of not more than five years, or by both such fine and imprisonment, in the discretion of the court."

(Act June 25, 1910, Ch. 395, Sec. 2, 36 St. L. U. S. 825.)

The term "interstate commerce," as therein used, is defined, in section 1 of the said Mann White Slave Act, as follows, to-wit:

"The term 'interstate commerce,' as used in this act, shall include transportation from any state or territory or the District of Columbia to any other state or territory or the District of Columbia."

(Act June 25, 1910, Ch. 395, Sec. 2, 36 St. L. U. S. 825.)

Jurisdiction of offenses, designated in said Mann White Slave Act, is specifically given to the United States courts by section 5 of said act, which provides as follows, to-wit:

"Any violation of any of the above sections two, three and four shall be prosecuted in any court having jurisdiction of crimes within the district in which said violation was committed, or from, through, or into which any such woman or girl may have been carried or transported as a

passenger in interstate or foreign commerce, or in any territory or the District of Columbia, contrary to the provisions of any of said sections."

(Act June 25, 1910, Ch. 395, Sec. 5, 36 St. L. U. S. 826.)

The aforementioned indictment, however, charged the plaintiff in error, in the instant case, with alleged transgressions, in words and figures as follows, to-wit:

"That Peter B. Hovley, whose full and true name other than as herein stated is to the grand jurors unknown, late of the Southern Division of the Southern District of California, did, on or about the 13th day of February, A. D. 1920, knowingly, wilfully, unlawfully and feloniously transport and cause to be transported and aid and assist in obtaining transportation for and in transporting in interstate commerce a certain woman, to-wit, Barbara Phillip, now Barbara Staalduynen, for the purpose of debauchery and for an immoral purpose, and with the intent and purpose to entice and induce the said Barbara Phillip, now Barbara Staalduynen, to give herself up to debauchery and to engage in an immoral practice, and did then and there procure and obtain and caused to be procured and obtained and aid and assist in procuring and obtaining a certain railroad ticket to be used by said Barbara Phillip, now Barbara Staalduynen, in interstate commerce and in the transportation of the said Barbara Phillip, now Barbara Staalduynen, from the city of Chicago, in the state of Illinois, to the city of Los Angeles, in the state of California, for an immoral purpose, and with the intent and purpose then and there on the part of the said Peter B. Hovley to

cause, entice and compel her, the said Barbara Phillip, now Barbara Staalduynen, to give herself up to debauchery and to an immoral practice, to-wit, to have sexual intercourse with and to be the mistress of the said defendant, Peter B. Hovley, the said Peter B. Hovley not being then and there the husband of the said Barbara Phillip, now Barbara Staalduynen.

"Contrary to the form of the statute in such case made and provided and against the peace and dignity of the said United States." [Tr. of Record p. 5.]

On this indictment the plaintiff in error herein was arraigned in the United States District Court for the Southern District of California, Southern Division, on the 10th day of May, 1920, and then and there interposed his plea of not guilty thereto. [Tr. of Record p. 8.]

Thereafter, to-wit, on the 11th day of February, 1921, in said United States District Court for the Southern District of California, Southern Division, this plaintiff in error withdrew his aforesaid plea of not guilty and thereupon entered his plea of guilty of the offense charged in the said indictment. [Tr. of Record p. 9.]

Thereafter, to-wit, on the 7th day of March, 1921, in said United States District Court for the Southern District of California, Southern Division, upon his said plea of guilty, as aforesaid, judgment was rendered against this plaintiff in error for the crime of violating the said act of June 25, 1910, known as the Mann White Slave Act, and he was, then and there,

accordingly, sentenced, by the said District Court, to imprisonment in the Orange county jail for the term and period of one year, and to pay a fine to the United States of America in the sum of one thousand dollars, and to stand committed to said Orange county jail until his payment of said fine. [Tr. of Record p. 10.]

On the 26th day of July, 1921, after several consecutive stays of execution of his aforementioned sentence of imprisonment had been allowed by the said United States District Court for the Southern District of California, this plaintiff in error entered upon the execution of said sentence.

Upon errors alleged, in the insufficiency of the indictment to charge an offense or offenses against the United States or any of the laws thereof, and in the jurisdiction and procedure of the court, in rendering said judgment and pronouncing said sentence, upon said plea of guilty, in the manner and form done, as aforesaid, a writ of error was sued out to this Honorable Court.

## Specifications of Errors.

Plaintiff in error challenges the sufficiency of the indictment to charge an offense and challenges the jurisdiction of said United States District Court for the Southern District of California to render judgment or pronounce sentence on the plea of guilty to said indictment, and assigns the following as errors of said lower court:

(1) There appears in said indictment no jurisdiction, of the grand jurors of the United States inquiring for the Southern District of California, over the transaction or transactions referred to in said indictment.

(2) There appears in said indictment no jurisdiction, of the United States District Court for the Southern District of California, over the transaction or transactions referred to in said indictment.

(3) The said indictment does not state facts sufficient to charge this plaintiff in error with the offense of knowingly procuring and obtaining, or causing to be procured or obtained, or aiding or assisting in procuring or obtaining, a railroad ticket or any form of transportation, or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any territory or the District of Columbia, in going to any place for the purpose of prostitution or debauchery, or for any other immoral purpose, or with the intent or purpose on the part of such person to induce, entice or compel her to give herself up to the practice of prostitution, or to give herself up to debauchery, or any other immoral practice, *whereby any such woman or girl was transported in interstate or foreign commerce, or in any territory or the District of Columbia.*

(4) The said indictment does not show that, by reason of, or as a result of, any act or conduct on the part of this plaintiff in error, any woman or girl was

ever or at all carried or transported as a passenger, in interstate commerce, from, through or into the district, or in any territory, wherein the District Court of the United States for the Southern District of California has jurisdiction of crimes.

(5) The said indictment fails to set forth the facts, intended therein to constitute the alleged transgression, so particularly as to enable this plaintiff in error to avail himself of the conviction herein in defense of another prosecution for the same offense.

(6) The plea of guilty, by this plaintiff in error, does not cure the jurisdictional defects of said indictment hereinbefore set forth.

(7) The plea of guilty could not be taken as a confession or final admission of the offense intended to be charged in said indictment, for no offense was therein charged.

(8) Plaintiff in error did not waive the jurisdictional defects of said indictment or the insufficiency thereof to state an offense, by his failure to demand a bill of particulars of the matters sought to be charged therein, for a bill of particulars cannot make an indictment valid which fails to state an essential element of the offense.

(9) Neither the jurisdictional defects of said indictment, nor the insufficiency thereof to state an offense, are cured by section 1025 of the Revised Statutes of the United States.

## BRIEF OF ARGUMENT AND STATEMENT OF POINTS AND AUTHORITIES.

I.

### There Appears in Said Indictment No Jurisdiction of the Grand Jurors of the United States of America Inquiring for the Southern District of California, Over the Transactions Referred to in Said Indictment.

Neither in the consideration of this specification of error, nor, indeed, in urging any of the errors herein specified, is it intended that the controlling question shall be one of niceties in pleading or of refinement in construction or application. On the contrary, the guiding purpose of the plaintiff in error, in his proceedings in error herein, is to submit to the reviewing court two broad general questions, to-wit:

1. Did the lower court have jurisdiction over the transactions set forth in the indictment? and

2. Did said transactions, so set forth in said indictment, constitute a crime or offense against the United States or any of the laws thereof?

In considering these questions, logical sequence requires that the first inquiry be directed to the jurisdiction of the grand jurors presenting said indictment, with reference to the transactions therein referred to.

In this connection, it is to be observed that the indictment, in form and in effect, refers to two distinct transactions, notwithstanding the fact that said

indictment contains but one count. These distinct transactions are as follows:

First: That, on a given day, this plaintiff in error transported, caused to be transported and aided and assisted in obtaining transportation for, and in transporting, a certain woman, in interstate commerce, for immoral purposes.

Second: That, on said given day, this plaintiff in error procured, caused to be procured and assisted in procuring a certain railroad ticket, to be used by said aforesaid certain woman as a means of her transportation, in interstate commerce, from the city of Chicago, in the state of Illinois, to the city of Los Angeles, in the state of California, for immoral purposes. [Tr. of Record p. 6.]

The caption of the indictment refers to a violation of the act of June 25, 1910, known as the Mann White Slave Act. [Tr. of Record p. 5.] In the first section of said act, Congress declares that the term "interstate commerce," as used in said act, shall include transportation from any state or territory or the District of Columbia to any other state or territory or the District of Columbia. (Act of June 25, 1910, Ch. 395, Sec. 1, 36 Stat. L. U. S. 825.)

Hence, it may be said that the aforementioned first distinct transaction, set forth in said indictment, exclusively charges that this plaintiff in error, on the 13th day of February, 1920, knowingly transported, caused to be transported and aided and assisted in

transporting Barbara Phillip from some state or territory or the District of Columbia to some other state or territory or the District of Columbia, for certain immoral purposes, and therewith the said first charge is finally concluded.

This charge, however, does not state where, or in what district, state or territory this plaintiff in error was guilty of acts or conduct whereby he so transported, caused to be transported or aided or assisted in transporting said woman. There is, therefore, nothing in said charge to show that the United States District Court for the Southern District of California, or the grand jurors of the United States inquiring for said district, acquired jurisdiction over the subject-matter of said charge, by reason of the Sixth Amendment of the United States Constitution, which provides that all crimes are to be tried in the state and district where committed. (U. S. Const., 6th Amend.)

Nevertheless, it may be contended that, supplemental to the general jurisdictional provisions of the Constitution, special jurisdiction, of the offenses in question, is provided in the act denouncing them. The said Mann White Slave Act, however, expressly gives special jurisdiction, of violations of the provisions thereof, exclusively to any court having jurisdiction of crimes within the district from, through, or into which any such woman or girl shall have been carried or transported as a passenger in interstate or foreign commerce. (Act of June 25, 1910, Ch. 395, Sec. 5, 36 Stat. L. U. S. 826.) Under such provision, there

is nothing in said charge to show that the United States District Court for the Southern District of California, or the grand jurors of the United States inquiring for said district, had any jurisdiction over the subject-matter of said charge; for the said charge carefully avoids to disclose or designate any specific district from, through, or into which said woman was carried or transported as therein alleged.

There is, therefore, nothing in said indictment to show that the said first charge therein was within the jurisdiction of the grand jurors by whom said indictment was found, returned and presented. Accordingly, said grand jurors had no jurisdiction to find and present said first charge.

> Bishop's New Crim. Proc. (2nd Ed.), Ch. 24;
> 14 Ruling Case Law 181;
> U. S. v. Meagher, 37 Fed. 875;
> U. S. v. Lacher, 134 U. S. 624;
> Todd v. U. S., 158 U. S. 278;
> Bartlett v. U. S., 126 Fed. 884;
> U. S. v. Hudson, 7 Cranch. 32;
> Vernon v. U. S., 146 Fed. 121.

With reference to the second distinct charge contained in said indictment, it is to be observed that, in view of the definition of the term "interstate commerce," set forth in the first section of the said Mann White Slave Act, as hereinbefore quoted (Act of June 25, 1910, Ch. 395, Sec. 1, 36 Stat. L. U. S. 825), the said second charge limits itself to the statement that,

on the 13th day of February, 1920, this plaintiff in error procured, caused to be procured and assisted in procuring a certain railroad ticket for said Barbara Phillip, by which said ticket said woman might have herself transported from some state, or territory, or the District of Columbia to some other state or territory or the District of Columbia, to-wit, from the city of Chicago, in the state of Illinois, to the city of Los Angeles, in the state of California, for immoral purposes.

There is, however, in said charge, nothing to show where, or in what district, state or territory this plaintiff in error so procured, caused to be procured or assisted in procuring said railroad ticket. There is, therefore, nothing in said charge to show that the United States District Court for the Southern District of California, or the grand jurors of the United States inquiring for said district, had jurisdiction over the subject-matter of said charge, by reason of guilty conduct or acts, on the part of this plaintiff in error, within said district. The railroad ticket in question may have been procured in South Africa and still be within the allegations of said charge.

It is true that the indictment states that "then and there" the said plaintiff in error procured, caused to be procured and assisted in procuring said ticket; but, while the word "then," in said context, obviously refers to the 13th day of February, 1920, to-wit, the time set forth in the preceding charge, nevertheless

the word "there," in that context, can find no relation elsewhere in the indictment.

Furthermore, no extenuation, for this absent allegation of place, can be found by reference to the provisions of the Mann White Slave Act; for, in said act, as hereinbefore set forth, the special jurisdictional clause provides only that any court, having jurisdiction of crimes within the district from, through, or into which any such woman or girl shall have been carried or transported, in contravention of said act, shall have jurisdiction of the violations of any of the provisions of said act. Here, however, in this second charge in said indictment, there is no semblance of any allegation that the woman was ever transported or carried, from any state, territory or district, or to any state, territory or district, nor is there anything to show that the railroad ticket in question was ever used by said woman.

There being, then, no allegation of transportation in said second distinct charge in said indictment, it follows that no jurisdiction can be given to any court, by the provisions of the said Mann White Slave Act, with reference to the particular transaction set forth in said charge, which, moreover, does not disclose where any alleged acts of this plaintiff in error were committed.

No jurisdiction, therefore, over the transactions in question being made to appear by the allegations in either of said charges of the indictment, it follows

that the grand jurors, in returning the indictment in the instant case, acted without jurisdiction, and that the United States District Court for the Southern District of California was without jurisdiction to hear or render judgment in the alleged cause set forth in said indictment.

Bishop's New Crim. Proc. (2nd Ed.), Ch. 24;
14 Ruling Case Law 181;
U. S. v. Meagher, 37 Fed. 875;
Vernon v. U. S., 146 Fed. 121;
*Ex parte* Bain, 121 U. S. 1, 30 L. ed. 149;
Forsythe v. U. S., 9 How. 571, 13 L. ed. 262;
*Ex parte* Farley, 40 Fed. 66;
U. S. v. Hill, 26 Fed. Cas. No. 15364;
*In re* Bonner, 151 U. S. 242, 38 L. ed. 149;
*In re* Mills, 135 U. S. 263, 34 L. ed. 107;
U. S. v. Eaton, 144 U. S. 677, 36 L. ed. 591;
U. S. v. Coolidge, 8 Wheat. 415, 4 L. ed. 124;
U. S. v. Hudson, 7 Cranch. 32, 3 L. ed. 259;
Biddle v. U. S., 156 Fed. 759;
U. S. v. Morrissey, 32 Fed. 147;
Hauser v. People, 46 Barb. (N. Y.) 33.

These jurisdictional defects in the indictment are fatal and cannot be supplied by intendments or reached by way of inference or argument.

Bartlett v. U. S., 126 Fed. 884;
U. S. v. Lacher, 134 U. S. 624;
Todd v. U. S., 158 U. S. 278;
U. S. v. Bathgate, 246 U. S. 220, 62 L. ed. 676.

## II.

## There Appears in Said Indictment No Jurisdiction of the United States District Court for the Southern District of California Over the Transactions Referred to in Said Indictment.

The argument and the points and authorities to be adduced in support of this specification of error are identical with those given in support of the preceding specification of error.

## III.

## Said Indictment Does Not State or Allege Any Fact or Facts Showing That This Plaintiff in Error Procured, Caused to Be Procured, or Assisted in Procuring a Railroad Ticket, to Be Used by Any Woman or Girl in Interstate Commerce or in Transportation of Herself From the City of Chicago, in the State of Illinois, to the City of Los Angeles, in the State of California, Whereby Any Such Woman or Girl Was Transported or Carried as a Passenger in Interstate Commerce.

The second charge in the indictment alleges that this plaintiff in error procured, caused to be procured and assisted in procuring a certain railroad ticket, from the city of Chicago to the city of Los Angeles, for a certain woman. There is no allegation, however, that the said ticket was ever used by said woman in transportation of herself from any state or territory

or the District of Columbia to any other state or territory or the District of Columbia.

Section 2 of the Mann White Slave Act, on which the indictment in question was predicated, denounces as a crime such procuring, causing to be procured or assisting in procuring of any ticket, or any form of transportation or evidence of the right thereto, to be used by any woman or girl in interstate or foreign commerce, or in any territory or the District of Columbia, in going to any place for immoral purposes, *whereby any such woman or girl is transported in interstate or foreign commerce or in any territory or the District of Columbia.* (Act of June 25, 1910, Ch. 395, Sec. 2, 36 Stat. L. U. S. 825.)

The fact material to be charged, in order to constitute the crime so denounced, is the actual transportation of the woman or girl in interstate or foreign commerce for immoral purposes, and, until such transportation shall have been effected, the crime is not consummated.

Wilson v. U. S., 232 U. S. 563;
Hoke v. U. S., 227 U. S. 308.

Such material fact must be stated clearly and explicitly, in order to be charged in the indictment, and cannot be left to intendment or reached by way of inference or argument.

Bartlett v. U. S., 126 Fed. 884;
U. S. v. Lacher, 134 U. S. 624;
Todd v. U. S., 158 U. S. 278;

Fontans v. U. S., 262 Fed. 283;
U. S. v. Hess, 124 U. S. 483.

No such transportation being charged as consummated, the said indictment, in so far as it refers to the procuring of said railroad ticket, does not state facts sufficient to constitute a crime against the United States or any of the laws thereof.

IV.

## The Charges, in This Indictment, Are Neither So Certain Nor So Specific That, Upon Conviction Thereon, the Indictment, or the Judgment Upon It, Can Constitute a Defense to a Second Prosecution of the Same Defendant for the Same Offense.

As hereinbefore set forth, the first charge laid in said indictment, in view of the definition, in the Mann White Slave Act, of the term "interstate commerce," merely alleges that, on the 13th day of February, 1920, Peter B. Hovley transported, caused to be transported and aided and assisted in transporting a certain woman, to-wit, Barbara Phillip, now Barbara Staalduynen, for certain immoral purposes, from some state or territory or the District of Columbia to some other state or territory or the District of Columbia, in violation of the Mann White Slave Act. [Tr. of Record pp. 5-6; Act of June 25, 1910, Ch. 395, Sec. 1, 36 Stat. L. U. S. 825.]

The indictment states no facts from which the places, occasions or particulars, on which the state-

ments therein were alleged to have been made, can be identified. In the event of a subsequent prosecution for the same offense, especially in another judicial district of the United States, from, through or into which said woman may have been transported in violation of the Mann White Slave Act, the question of prior conviction or former jeopardy could be determined only from the consideration of this indictment and the judgment thereon rendered. Any statements of this defendant in the lower, made prior or subsequent to his plea of guilty, and any other statements heard by the trial judge do not become a part of the judgment.

Hence, the indictment and judgment fail to identify the charges, so that another prosecution therefor would be barred thereby.

The second charge laid in said indictment, as heretofore shown, fails to allege any transportation in violation of the Mann White Slave Act, and thereby fails to supply the deficiency in the first charge.

The indictment, therefore, in the instant case, is fatally defective.

Fontana v. U. S., 262 Fed. 283;
Florence v. U. S., 186 Fed. 961;
Winters v. U. S., 201 Fed. 845;
U. S. v. Lacher, 134 U. S. 624;
U. S. v. Bathgate, 246 U. S. 278;
Burton v. U. S., 202 U. S. 344;
U. S. v. Cruikshank, 92 U. S. 542.

V.

**The Jurisdictional Defects in the Indictment, or Its Failure to Charge an Offense, Were Not Cured or Waived by Plea of Guilty.**

12 Cyc. 353;
Hocking Valley R. Co. v. U. S., 210 Fed. 735.

VI.

**Plea of Guilty Cannot Be Taken as a Final Admission of the Offense When the Indictment Is Materially Defective.**

Hocking Valley R. Co. v. U. S., 210 Fed. 735;
Hogue v. State, 13 Ohio Cir. 567;
12 Cyc. 353.

VII.

**The Jurisdictional Defects of the Indictment, or Its Failure to Charge an Offense, Were Not Cured or Waived by Defendant's Failure to Demand a Bill of Particulars.**

U. S. v. Bayaud, 16 Fed. 376;
May v. U. S., 199 Fed. 53.

VIII.

**The Defects in the Indictment, Wherein No Venue or Jurisdiction Appears, or No Offense Is Charged, Are Not Remedied by Section 1025 of the Revised Statutes of the United States.**

U. S. v. Morrissey, 32 Fed. 147.

## Conclusion.

In submitting the hereinbefore specified errors in the indictment and the proceedings thereon had in the lower court, in the case at bar, counsel for plaintiff in error has conscientiously sought to avoid any reference to, or commentary upon, defects of mere form, as they appear in the transcript of record, and has endeavored to limit his brief of argument to errors which, if unchallenged in the proceedings herein, would virtually deprive this plaintiff in error of the protection of that basic principle of English and American jurisprudence which supports our constitutional guaranty that no man shall be deprived of liberty, among other rights, without due process of law. The weight of judicial authority has ever held, and continues to hold, that there shall be no prosecution or conviction for crime unless the court in which the prosecution is instituted and carried on has jurisdiction of the offense charged, such jurisdiction first having been ascertained and made manifest in the indictment by which the prosecution is instituted. It is generally conceded that it is an indispensable element of due process of law that the indictment shall set forth facts constituting the alleged transgression so particularly as to enable the accused to avail himself of a conviction or acquittal in defense of another prosecution for the same offense.

In the instant case, the indictment neither stated an offense nor made manifest the jurisdiction of the lower court to consider the offense intended to be charged.

All of which is respectfully submitted.

THEODORE STENSLAND,
*Attorney for Plaintiff in Error.*